
State Water Resources Control Board

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE CALL

The State Water Resources Control Board
Administrative Hearings Office
will hold a Pre-Hearing Conference Call and a Public Hearing
on the pending petitions for change and extension of time of

The City of Solvang

for water-right Permit 15878 (Application A022423),
which authorizes diversions of water from the Santa Ynez River (underflow)
in Santa Barbara County

**The Pre-Hearing Conference Call will begin on
April 29, 2020 at 9:30 am**
with call-in information to be circulated to interested parties and persons

**The Public Hearing will begin on
August 31, 2020 at 9:00 am**
in the **Sierra Hearing Room**
Joe Serna, Jr. CalEPA Building
1001 I Street, Second Floor
Sacramento, California

**This Public Hearing will continue as necessary on
September 2, 2020 at 9:00 am in the Byron Sher Auditorium
and
September 11, 2020 at 9:00 am in the Sierra Hearing Room**

PURPOSE OF HEARING

The purpose of this hearing is to receive evidence to be considered in determining whether the State Water Resources Control Board (“State Water Board” or “Board”) should approve the petitions for change and extension of time filed by the City of Solvang for water-right Permit 15878 (Application A022423), and, if so, whether any new terms or conditions should be added to the permit.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

BACKGROUND

Water Right Permit 15878

The State Water Board's records (available for public review on the State Water Board's Electronic Water Right Information Management System ("eWRIMS")) and the State Water Board's files in the Board's Water Rights Records Unit ("Records Unit") indicate that water-right Permit 15878 was issued to the Solvang Municipal Improvement District on August 25, 1969, that the Board issued an order on July 7, 1981, which amended some of the terms of this permit, and that the permit was assigned to the City of Solvang ("Solvang") on February 27, 1986.

Permit 15878 authorizes Solvang to divert up to 5.0 cubic-feet per second ("cfs") of water from the Santa Ynez River (underflow) in Santa Barbara County from January 1 to December 31 of each year for municipal purposes. As amended by the July 7, 1981 order, Permit 15878 specifies that: (a) complete application of the water to the proposed use shall be made on or before December 1, 1990; and (b) total annual diversions and use under the permit shall not exceed 3,600 acre-feet per year. The authorized points of diversion are "several wells to be located at moveable points" between a specified "Point C" and a specified "Point D." The authorized place of use apparently is Solvang's service area.

Historical Diversions and Use

The records in the Records Unit and on eWRIMS contain the permittee progress reports that Solvang and the predecessor district filed for each year from 1969 through 2018, except that there are no reports in these records for 1995 or 2002. The hearing officer requests that Solvang file copies of the reports for these two years as hearing exhibits, if they are available. According to these reports, Solvang's highest total annual diversion under Permit 15878 was 445,965,000 gallons (approximately 1,368.6 acre-feet ("af")) in 1988. The highest monthly diversion was 56,980,000 gallons in August 1988, which is equal to an average diversion rate of approximately 2.84 cfs.¹

1990 Petition for Extension of Time

On December 6, 1990, Solvang filed a petition for extension of time for Permit 15878. This petition requested a five-year extension of time and stated that the proposed construction work was estimated to be completed in 1996 and the estimated year in which water would be fully used was 1997. On August 16, 2010, the State Water Board's Division of Water Rights issued an order denying this petition. The primary reason stated in this order for denying the petition was that Solvang had not completed

¹ Exhibit "A" to Solvang's 1988 permittee progress report contains some hand-written notations regarding these usage amounts and conversions to cfs and acre-feet per year. These notations already were in this exhibit when it first was reviewed by the hearing officer. The hearing officer does not know who made them.

the required California Environmental Quality Act (“CEQA”) document for the petition, and that, without this document, the Division could not approve the petition.

On September 15, 2010, Solvang filed a petition for reconsideration of the Division’s order with the State Water Board. A January 27, 2012 contact report states that Solvang’s attorney advised a Division of Water Rights staff member that Solvang had decided to file a new petition for extension of time in lieu of proceeding with this petition, and that the Division staff member advised Solvang’s attorney that the Board would not act on Solvang’s petition for reconsideration.

Solvang’s Draft and Final EIRs

In June 2012, Solvang completed and circulated a Draft Environmental Impact Report (“Draft EIR”) for its Water System Master Plan Update. Solvang’s petitions for change and extension of time, which Solvang then filed in 2015 (described below), are included in the Draft EIR’s Project Description. In January 2014, Solvang completed and circulated a Final Environmental Impact Report (“Final EIR”) and proposed findings of fact for this project. Copies of the Draft EIR, Final EIR, and proposed findings are in the State Water Board’s files in the Records Unit. The hearing officer’s understanding is that Solvang certified this Final EIR and approved the project described in the Final EIR in approximately January 2014. The hearing officer requests that Solvang submit exhibits and testimony for the hearing demonstrating that Solvang certified this EIR, approved this project, and complied with all of the applicable California Environmental Quality Act (“CEQA”) requirements for these actions.

Solvang’s EIR uses a baseline maximum annual water diversion rate under Permit 15878 of 1,053 acre-feet per year (“af/yr”) and a baseline maximum diversion rate of 1.85 cfs (averaged over the month of highest diversions) for its analyses of the potential environmental effects of the proposed project. These numbers are based on the maximum beneficial-use amounts that occurred during the 12-month period of June 1998 through May 1999 (1,053 af) and during July 1998 (1.85 cfs). These amounts are described in a Division of Water Rights report of a compliance inspection that occurred on August 11, 1999 and in a December 15, 1999 letter from the Chief of the Division’s Compliance & Enforcement Unit to Solvang. The hydrological analyses that were conducted for this EIR, which are described in several technical memoranda that are included as appendices to the Draft EIR, use these baseline amounts in their analyses. These technical memoranda do not refer to the instream-flow requirements that the State Water Board adopted several years later in Order WR 2019-0148 (discussed below).

2015 Petitions for Change and Extension of Time

On May 7, 2015, Solvang filed a petition for change and a new petition for extension of time for Permit 15878.

The petition for change seeks an order amending Permit 15878 to increase the length of the reach of the Santa Ynez River underflow from which Solvang may divert water by changing the lower point of the present authorized reach, Point D (described above), to a new Point E, which would be located approximately 1.5 miles downstream of Point D. The petition states that the rationale for this request is that, within the existing reach (between Point C and Point D), “the Santa Ynez River [is] impacted by other diverters and is unlikely to produce the additional water the City requires to meet its water needs without well interference and environmental impacts.” The petition states that this change “is intended to provide the City the ability to locate future groundwater wells away from other permitted water rights diverters and critical habitat areas to minimize adverse impacts on other diverters in the river, the riparian environment, and the fish.”

The new petition for extension of time seeks an extension of the present December 1, 1990 beneficial-use deadline for 15 years.

On March 24, 2016, the State Water Board, Division of Water Rights, issued a public notice of these petitions. This notice states that the proposed time extension is for 15 years from the date the time-extension petition is approved.

Protests to Petitions

On April 25, 2016, the United States Department of the Interior, Bureau of Reclamation (“Reclamation”), submitted a letter with comments on these petitions. In a December 20, 2016 e-mail to Division of Water Rights staff, Reclamation’s representative stated that Reclamation “intended this letter to be a letter of comment, and not a formal protest.”

The following four entities filed protests to Solvang’s petitions: (1) National Marine Fisheries Service (“NMFS”); (2) California Trout; (3) Alisal Guest Ranch; and (4) Santa Ynez River Water Conservation District, Improvement District No. 1 (“Improvement District No. 1”).

Solvang filed answers to these four protests and Reclamation’s comment letter.

Since then, the parties apparently engaged in some discussions and Solvang’s attorney sent a letter report to the Division of Water Rights on March 23, 2018. This letter stated that it is unlikely that Solvang will reach agreement with NMFS or California Trout. This letter stated that representatives of Solvang, Alisal Guest Ranch and Improvement District No. 1 met during December 2017 through March 2018 and agreed to tentative operating rules, and that “Solvang believes it is close to approval of its Operating Rules with ID No. 1 and Alisal,” and that the “next phase will be to negotiate a written settlement agreement between the three parties.” A November 12, 2019 e-mail from Solvang’s attorney stated that the proposed settlement agreements between Solvang and Alisal Guest Ranch and Improvement District No. 1 still had not been completed. There are no subsequent communications regarding these proposed agreements in the Record Unit’s files.

State Water Board's Order WR 2019-0148

On September 17, 2019, the State Water Board adopted Order WR 2019-0148. This order amended water-right Permits 11308 and 11310 (Applications A011331 and A011332), which are held by Reclamation for its operations of the Cachuma Project on the Santa Ynez River. Terms 15 and 16, on pages 133-137 of this order, specify new bypass and instream-flow requirements for the Cachuma Project.

Assignment of Petitions to Administrative Hearings Office

Water Code section 1110 established the Administrative Hearings Office (“AHO”) within the State Water Board, effective July 1, 2019. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO. Water Code section 1114 provides that, after such a hearing is held and the matter is submitted to the AHO, the AHO hearing officer shall prepare a proposed order and provide it to the Board for the Board’s consideration.

On February 10, 2020, Erik Ekdahl, Deputy Director of the Division of Water Rights, sent a memorandum to Eileen Sobeck, the State Water Board’s Executive Director, which recommended transferring Solvang’s petitions to the AHO. On February 10, 2020, Ms. Sobeck issued a memorandum to AHO, assigning these petitions and related hearing issues, in whole, to the AHO.

STATUTES AND REGULATIONS APPLICABLE TO CHANGE AND TIME-EXTENSION PETITIONS

Water Code sections 1700-1704 apply to Solvang’s change petition. Section 1702 provides that, before the Board may grant permission to make the changes requested in a petition, “the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved.” Section 1704, subdivision (a) provides that the Board, “after a hearing, may approve with conditions, or deny, a petition.” (For a discussion of the “no injury” rule, see *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 736-745.) The State Water Board’s regulations, California Code of Regulations, title 23, sections 791-796, apply to this change petition.

Water Code sections 1397-1398 apply to Solvang’s time-extension petition. Section 1397 requires that project construction work “shall be completed and the water applied to beneficial use in accordance with this division [of the Water Code], the rules and regulations of the board, and the terms of the permit and within the period specified within the permit.” Section 1398, subdivision (a), provides that “[t]he period specified in the permit . . . for application of the water to beneficial use, . . . may, for good cause shown, be extended by the board.”

The State Water Board's regulation, California Code of Regulations, title 23, section 844, provides that "[a]n extension of time . . . to apply water to full beneficial use will be granted only upon such conditions as the board determines to be in the public interest and upon a showing to the board's satisfaction that due diligence has been exercised, that failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and the satisfactory progress will be made if an extension of time is granted." In its Order WR 2000-13, the State Water Board considered and applied these factors when it acted on another city's petition for extension of time for its water-right permit.

PRE-HEARING CONFERENCE CALL

The hearing officer has decided to hold a pre-hearing conference call on the date and at the time specified on the first page of this notice. Because of the current COVID-19 crisis, no in-person appearances will be allowed for this conference call. A court reporter will record the conference call electronically and prepare a transcript, and the hearing officer will prepare a pre-hearing conference order after the conference call. To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself each time before speaking during the conference call.

The AHO will circulate the call-in information to all Parties that file Notices of Intent to Appear ("NOIs," discussed below). The AHO also will post a notice with the call-in information on the AHO's public webpage and will circulate this notice to the AHO LYRIS e-mail list.

During the conference call, the hearing officer will discuss the following issues with the Parties and their representatives:

1. As discussed above, the hydrological analyses for Solvang's EIR used baseline diversion amounts of 1,053 af/yr and 1.85 cfs for their analyses of the potential effects of the proposed project described in the EIR. These analyses also used a potential maximum annual diversion of 2,400 af/yr. During the pre-hearing conference call, the hearing officer will discuss with the Parties whether, for the purposes of this hearing, new hydrological analyses should be conducted that will include the new instream-flow requirements in Order WR 2019-0148 (plus any requirements of NMFS's 2000 Biological Opinion for the Cachuma Project that remain applicable). The hearing officer also will discuss with the Parties whether new hydrological analyses should be made for scenarios with: (a) Solvang's higher 1988 diversion rates (1,368.6 af/yr and 2.84 cfs) as baseline diversion rates for a "without project" scenario, and (b) with Solvang's maximum proposed annual diversion rates of 1,980 af/yr and 5.0 cfs for the "with project" scenarios."
2. The State Water Board is a CEQA responsible agency. During the pre-hearing conference call, the hearing officer will discuss with the Parties whether a

subsequent or supplemental EIR under CEQA Guidelines sections 15162 and 15163, or an addendum under CEQA Guidelines section 15164, is required before the State Water Board may act on Solvang's petitions for change and extension of time, and, if any new CEQA document is required, who should prepare it.

3. The proposed hearing issues are listed below. During the pre-hearing conference call, the hearing officer will discuss with the Parties whether any of these hearing issues should be amended, and whether any additional hearing issues should be added.
4. The deadlines for submitting exhibits and testimony and the hearing dates are listed below. During the pre-hearing conference call, the hearing officer will discuss with the Parties whether this schedule is appropriate.
5. During the pre-hearing conference call, the hearing officer will ask the Parties whether there are any other issues concerning the hearing or applicable procedures that anyone would like to discuss.

PRE-HEARING CONFERENCE STATEMENTS

On or before the deadline listed below, each Party shall submit and serve a pre-hearing conference statement that separately addresses each of the pre-hearing conference issues listed above that the Party wants to address. The Parties also may include in their pre-hearing conference statements discussions of any other issues they believe are relevant.

OTHER PARTIES' EXHIBITS RESPONDING TO SOLVANG'S EXHIBITS DESCRIBING NEW HYDROLOGICAL WORK

Based on the discussion above under Pre-Hearing Conference Call Issue 1, the hearing officer anticipates that Solvang will conduct additional hydrological modeling and submit exhibits and testimony regarding this new modeling with Solvang's other exhibits and testimony that must be filed by the initial exhibit filing deadline specified below.

The hearing officer believes that other Parties should have opportunities to review Solvang's exhibits and testimony regarding this new hydrological modeling and then to prepare and submit exhibits and testimony responding to these Solvang exhibits. The schedule below specifies a separate deadline for filing such responsive exhibits and testimony. This latter deadline is only for such responsive exhibits and testimony. Other Parties must file all of their other exhibits and testimony by the initial exhibit-filing deadline.

PURPOSE OF HEARING; HEARING ISSUES

The purpose of this hearing will be for the hearing officer to receive evidence regarding the following issues:

- 1) Should Solvang's petition for extension of time be granted?
 - a) What are the proper baseline annual and monthly diversion rates for analyzing the effects that would occur from granting this petition?
 - b) Would granting this petition be in the public interest?
 - c) Has Solvang exercised due diligence in its actions regarding Permit 15878?
 - d) Was Solvang's failure to comply with previous time requirements in Permit 15878 occasioned by obstacles that could not reasonably be avoided?
 - e) Will Solvang make satisfactory progress if an extension of time for completion of application of water to beneficial use under Permit 15878 is granted?

- 2) Should Solvang's change petition be granted?
 - a) Would the State Water Board's granting this petition result in injury to any other legal user of water?
 - b) Would the State Water Board's granting this petition unreasonably affect any fish, wildlife or any other instream beneficial use?
 - c) Would the State Water Board's granting this petition be in the public interest?
 - d) If this change petition should be granted, then what new terms or conditions, if any, including any operations plans, should be added to Permit 15878 when the petition is granted? The hearing officer invites all parties to submit proposed new permit terms and conditions, including proposed operations plans, as hearing exhibits.

- 3) Is the Final EIR that Solvang prepared and certified for the proposed project described in the Final EIR sufficient under CEQA for the State Water Board to act on these petitions? If not, what additional CEQA document needs to be prepared and who should prepare it?

HEARING OFFICER AND HEARING TEAM

A hearing officer from the State Water Board's Administrative Hearings Office will preside during the pre-hearing conference call and the hearing. Other AHO staff members may be present and assist the hearing officer during the status conference call and the hearing, and throughout these proceedings.

SEPARATION OF FUNCTIONS; PROHIBITION ON EX PARTE COMMUNICATIONS

All Parties are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For a discussion of *ex parte* communications regarding State Water Board members, see "Ex Parte Questions and Answers," available on the State Water Board's website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf. These

rules regarding *ex parte* communications apply to all members of the AHO hearing team.

If any Party wants to communicate with the AHO at any time regarding any procedural or substantive issue regarding these proceedings, including any issue regarding the pre-hearing conference call, hearing procedures or filing of documents, then that Party shall make such communication to the AHO in writing (by e-mail or letter) and serve all other Parties with copies of the communication and include a proof of service demonstrating such service with the written communication to the AHO. A Party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the Parties or their representatives in an electronic-mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

Before the AHO circulates the list of Parties described below, any Party submitting any document to the AHO for this proceeding (including the Party's NOI, described below) shall transmit copies of the document to all of the other Parties listed in the attached proof of service. After the AHO circulates the list of Parties that have filed NOIs, any Party submitting any document to the AHO shall transmit copies of the document to all of the other Parties on the NOI list. Whenever any Party files any document with the AHO for this proceeding, the Party shall include a proof of service using one of the methods described above that confirms that the Party has transmitted copies of the document to all other Parties and that describes the method of service.

Please do not attempt to communicate by telephone or in person with any AHO hearing team member regarding any procedural or substantive issue concerning this hearing, because other Parties would not be able to participate in such communications. If oral communications with any members of the AHO hearing team are necessary to discuss any procedural or substantive issue, then the AHO will set up a conference call in which representatives of all Parties may participate. Any Party may request such a conference call at any time using the written communications protocols described above.

HEARING PARTICIPATION PROCEDURES; NOTICES OF INTENT TO APPEAR

Any Person or Entity that wants to participate in the hearing in this matter must file a Notice of Intent to Appear ("NOI"), using the form in this notice, with the AHO before the deadline listed below. The AHO encourages Parties to agree to accept electronic service (by e-mail) of all documents regarding this hearing. If a Party is not willing to do this, then the Party may check the appropriate box on the NOI form. If this box is not checked, then the AHO will assume that the Party agrees to accept electronic service.

Within one week after the deadline to submit NOIs, the AHO will circulate a list of the Parties that have filed NOIs to all Parties and post that list on the AHO's webpage.

NOI and Exhibit Filing Deadlines
Pre-Hearing Conference Call and Hearing Schedule

Deadlines / Schedule	Date and Time
Deadline for any Party that wants to participate in the hearing to file an NOI with AHO and serve copies on all other Parties	April 15, 2020, 4:00 pm
Deadline for filing and service of Pre-Hearing Conference Statements	April 24, 2020, 4:00 pm
Pre-hearing conference call	April 29, 2020, 1:30 pm
Deadline for all Parties to file their exhibits and exhibit identification indices with AHO and serve copies on all other Parties (except for rebuttal exhibits to be filed by the next deadline)	August 3, 2020, 4:00 pm
Deadline for Parties to file their exhibits and exhibit identification indices for rebuttal to Solvang’s exhibits describing new hydrological modeling work	August 24, 2020, 4:00 pm
Hearing begins	August 31, 2020, 9:00 am
Additional hearing days (if necessary)	September 2 and 11, 2020, 9:00 am

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

NOIs may be submitted in paper (by mail or hand delivery) or electronically. All Parties shall file and serve exhibits and exhibit identification indices electronically, unless a Party applies to the AHO for authorization to file and serve paper copies of exhibits and exhibit identification indices. Any Party seeking such authorization shall file and serve the application for authorization at least three weeks before the exhibit submittal deadline and shall include a justification for the request in the application.

All documents submitted to the AHO, including NOIs, exhibits and exhibit identification indices, shall be addressed and submitted by one of the following methods (with proofs of service, as discussed above):

Methods	Address
By Email:	AdminHrgOffice@waterboards.ca.gov With Subject Line “Solvang Petitions Hearing”
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see note below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office

	c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Room 114 Sacramento, CA 95814
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Any hand-delivered submittals must be date-and-time-stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Persons delivering submittals to the Records Unit must first check in with CalEPA Building lobby security personnel on the first floor of the CalEPA Building and obtain authorization to go to the Water Rights Records Unit on the second floor.

Please see the enclosed Information Concerning Water Right Hearings for more details regarding hearing procedures and requirements for submittals of exhibits, including submittals of electronic files that exceed the capacities for e-mail attachments.

ADMINISTRATIVE RECORD

The AHO has copied several documents from eWRIMS and the State Water Board's Records Unit public files for water-right Permit 15878 and has included them in the initial administrative record for this hearing. The AHO will post files of these documents to an ftp site and will include instructions for access to this ftp site in the list of NOI parties that the AHO will circulate after the deadline for filing NOIs. The Parties may review the Board's Records Unit public files for this application and submit copies of other documents in these files as exhibits.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet Web site accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO's Internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/ Any interested party may sign up to receive all AHO notices at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

SETTLEMENT

As discussed above, representatives of the Parties apparently have engaged in some settlement discussions regarding these petitions. Some or all of these Parties may decide to engage in further settlement discussions, and may or may not include other persons in those discussions. Because of the separation of functions discussed above, no member of the AHO hearing team will participate in such settlement discussions or receive any evidence of what occurred during them (except for a written settlement agreement, if the Parties negotiate and sign such an agreement and submit it to the AHO). If any of the Parties enter into a written settlement agreement signed by representatives of the Parties, then they should notify the AHO of this agreement, using the procedures for submitting documents described above, as soon as possible.

TRAVEL TO AND ACCESSIBILITY AND SECURITY AT THE CALEPA BUILDING

A map to the Joe Serna Jr.-CalEPA Building (CalEPA Building) and parking information are available at <http://www.calepa.ca.gov/headquarters-sacramento/location/>. The CalEPA Building is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact Moises Moreno-Rivera at (916) 341-5261 or moises.moreno-rivera@waterboards.ca.gov.

Due to enhanced security precautions at the CalEPA Building, all visitors are required to register with security staff prior to attending any meeting or hearing. To register, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, sign in and receive a visitor's badge. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in.

WEBCAST OF HEARING

Depending on the facilities in the hearing room, broadcasts of the water rights hearing may be available via the internet and accessed at: <https://video.calepa.ca.gov/>. The pre-hearing conference call will not be webcast.

Date: March 30, 2020

SIGNATURE ON FILE
Alan B. Lilly, Presiding Hearing Officer

Enclosures: -Information Concerning Appearances at Water-Right Hearings
-Notice of Intent to Appear form
-Exhibit Identification Index form
-Service List

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INFORMATION CONCERNING WATER-RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (“State Water Board” or “Board”) is available upon request or may be viewed at the State Water Board’s web site: http://www.waterboards.ca.gov/laws_regulations

Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be given the opportunity to present closing arguments or to submit closing briefs. The Administrative Hearings Office (“AHO”) encourages parties with common interests to work together to make unified presentations and to make the hearing process more efficient. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party, where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the AHO and must serve such requests on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural requests filed in writing until at least 10 days after receiving the request, to give other parties an opportunity to respond, unless the hearing schedule requires an earlier ruling.

- 2. SETTLEMENTS:** In water-right enforcement hearings, a State Water Board prosecution team prosecutes an alleged violation. In such enforcement cases, the prosecution team and the party that is the subject of the proposed enforcement action may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. Although the AHO may authorize other persons to participate in the hearing as parties, such authorizations do not necessarily allow those persons to participate in any settlement discussions between the prosecution team and the party against whom the prosecution team’s action is directed.

The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board [Resolution No. 2012-0061](#), may approve a proposed settlement agreement between the prosecution team and the party subject to a proposed enforcement action. However, all parties will be given

opportunities to comment on any settlement agreement submitted to the State Water Board or the Executive Director for approval unless all parties are signatories to the settlement agreement.

In hearings involving an unresolved protest or protests to a water-right application or petition, the parties whose dispute originated the action may meet privately to engage in settlement discussions, and they may, or may not, include other persons in such discussions. If the original parties resolve the dispute, the hearing officer will determine whether or not to continue to hold the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestants and the applicant or petitioner.

- 3. PARTIES:** Besides the prosecution team and the respondent in enforcement matters, and besides the applicant or petitioner and protestants with pending protests in application and petition matters, the hearing officer may authorize additional people and entities to participate as parties. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) Except as may be decided by specific rulings of the hearing officer, any person or entity that timely files a Notice of Intent to Appear indicating the desire to participate and not to just present a policy statement normally will be authorized to participate as a party. The hearing officer may impose limitations on any party's participation. (Gov. Code, § 11440.50, subd. (c).) The hearing officer may designate persons or entities that do not file a timely Notice of Intent to Appear as parties at the hearing officer's discretion, for good cause shown, subject to appropriate conditions as determined by the hearing officer. Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence, make objections and examine witnesses.
- 4. POLICY STATEMENTS BY INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will provide opportunities for interested persons who are not designated as parties to present non-evidentiary policy statements. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Such interested persons and entities will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may be able to access some hearing documents from the AHO website.

Policy statements are subject to the following provisions in addition to the requirements specified in California Code of Regulations, title 23, section 648.1, subdivision (d).

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating an intent to make only a policy statement.
- b. The AHO requests that policy statements be submitted to the AHO and copies served on all parties before they are presented at the hearing. Please see section 7, for details regarding electronic submittals of documents.

5. NOTICE OF INTENT TO APPEAR: Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be received by the AHO no later than the deadline specified in the Hearing Notice. Failure to submit a Notice of Intent to Appear by this deadline may be interpreted by the AHO as intent not to appear.

Interested persons who will not be participating as parties, but instead will be presenting only non-evidentiary policy statements, also should file Notices of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear also must include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her written testimony. (See section 6, below, for requirements that apply to written testimony.) Parties who do not intend to present cases-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.² Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the AHO and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The AHO will e-mail a service list of parties to each person or entity that has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, notice will be sent to those parties on the service list and interested persons that have filed Notices of Intent to Appear expressing their intents to present only policy statements.

² A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officer allows these in the hearing.

6. WRITTEN TESTIMONY AND OTHER EXHIBITS: Exhibits include all written proposed testimony, statements of qualifications of expert witnesses, and other documents to be submitted as evidence. Each party proposing to present testimony at the hearing shall submit all of the party's proposed written testimony by the deadline for filing exhibits.³ Proposed written testimony shall be designated as exhibits (one exhibit for each witness), and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony normally will not be allowed. A party who proposes to offer expert-witness testimony must submit an exhibit containing a statement of the expert witness's qualifications, in addition to a separate exhibit with the expert witness's proposed testimony.

The AHO encourages all parties to prepare and submit sets of slides that summarize each of their witnesses' testimony, which then can be used to facilitate the witnesses' oral summaries of their testimony during the hearing. The set of such slides for each witness must be labeled as a separate exhibit and submitted and served by the exhibit-filing deadline.

Each party shall submit to the AHO three paper copies and one electronic file of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index in Word or Excel format. Each party also shall serve an electronic file of each exhibit and the exhibit index on every other party on the service list. Each party shall file a statement of service indicating the manner of service with the party's exhibits.

Please label each exhibit with a short version of your party name and sequential numbers. For example, Solvang County's exhibits should be numbered **Solvang-1, Solvang-2, etc.**, NMFS's exhibits should be numbered **NMFS-1, NMFS-2, etc.**, and other parties' exhibits should have similar numberings. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Please number each paragraph of each witnesses proposed written testimony sequentially, 1, 2, 3, etc. Do not use any sub-paragraph letters like 1a, 1b, etc. You may include headings like "Background," "Introduction," etc. for different sections of a witness's proposed written testimony, but do not number or letter these headings and do not re-start the paragraph numbering in each section.

The exhibits and indexes for this hearing, and a statement of service, must be received by the AHO and served on the other parties no later than the deadline specified in the Hearing Notice. The AHO may interpret failure to timely submit exhibits as a waiver of the party's right to submit exhibits and the party's status as a party.

³ The hearing officer may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models so that a qualified independent expert could reproduce the technical study or model and use it to obtain the same results.
 - b. The hearing officer has discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (See Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the AHO of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A party seeking to enter into evidence as an exhibit a voluminous document or database may so advise the other parties before the filing deadline for exhibits, and may ask the other parties whether or not they wish to receive copies of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officer, such exhibits may be submitted to the AHO solely in electronic form, using a file format readable by Microsoft Office 2003 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents also are admitted as exhibits.
 - e. Parties submitting large-format exhibits such as maps, charts, and other graphics shall provide the originals for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large-format original exhibit if it is readable.
- 7. ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents to the AHO in electronic form (in addition to three paper copies) unless the hearing officer authorizes submission of exhibits in a different format. In addition, the AHO encourages all parties to agree to accept electronic service.

Documents submitted or served electronically must be in Adobe Portable Document Format (PDF) except where a reasonable exception may be made for a Microsoft

Office-supported format, such as Microsoft Excel for spreadsheets, Microsoft PowerPoint for slide presentations, and Microsoft Excel or Word for Exhibit Identification Indexes. Electronic submittals to the AHO of documents of 11 megabytes or less in total size (incoming mail server attachment limitation) may be sent via electronic mail to: adminhrqoffice@waterboards.ca.gov with the subject line, “**Solvang Petitions Hearing**”. Electronic submittals to the AHO of documents greater than 11 megabytes in total size shall be submitted on a compact disc (CD), digital versatile disc (DVD), or universal serial bus (USB) flash drive. **Each electronically submitted exhibit must be saved as a separate PDF file, with the filename in lower case lettering.** If a party submits exhibits to the AHO in one of these formats, the party also must serve copies of these exhibits on all of the other parties in the same format.

8. **PRE-HEARING CONFERENCE:** At the hearing officer’s discretion, a pre-hearing conference may be conducted before the proceeding to discuss the hearing issues, the pre-hearing and hearing schedules, the scope of the hearing, the status of any protests, the formats of exhibits, opening statements and policy statements, methods of service, and any other appropriate procedural issues. If the hearing officer decides to hold a pre-hearing conference, then the hearing notice will state the date, time and location of the pre-hearing conference.
9. **ORDER OF PROCEEDING:** The hearing officer normally will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5. The time limits specified below may be changed by the hearing officer, for good cause.
 - a. **Policy Statements:** Policy statements normally will be heard at the start of the hearing, before the presentations of cases-in-chief. **Oral summaries of the policy statements normally will be limited to 5 minutes.**
 - b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues in the hearing notice. Each case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party’s witnesses. The hearing officer may allow re-direct examination and re-cross examination. The hearing officer will decide whether to accept the party’s exhibits into evidence upon a motion of the party after completion of the party’s case-in-chief.
 - i. **Opening Statements:** At the beginning of each party’s case-in-chief, the party or the party’s attorney may make an opening statement that briefly and concisely states the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. **Oral opening statements normally will be limited to 5 minutes per party.** A party may submit a written opening statement before the hearing or during the hearing, prior to the party’s case-

in-chief. Any policy-oriented statements by a party should be included in the party's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. **Each party will be allowed a maximum of 10 minutes total to summarize all of the party's written testimony on direct examination.**⁴
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witnesses' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined as a panel. **Cross-examination initially will be limited to 15 minutes per witness or panel of witnesses.** The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness.
 - iv. **Re-direct and Re-cross Examination:** Re-direct examination may be allowed at the discretion of the hearing officer. Any re-direct examination and re-cross examination permitted will be limited to the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.
 - v. **Questions by Hearing Officer:** The hearing officer may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer may allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

Rebuttal testimony and exhibits do not need be submitted before the hearing unless the hearing officer or the hearing notice requires such submittals.

⁴ The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. For example, the hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officer is satisfied that the party could not produce written direct testimony for the witness.

Rebuttal evidence will be limited to evidence that is responsive to evidence presented with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party offering rebuttal evidence. Rebuttal evidence does not include repetitive evidence. Cross-examination of witnesses offering rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at another time, the hearing officer may allow oral closing arguments or may set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for submitting and serving closing briefs. A party shall not attach any documents of evidentiary nature to the party's closing brief unless the document is already in the evidentiary hearing record or is the subject of an offer of proof made during the hearing.

10. RULES OF EVIDENCE: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection will not be sufficient by itself to support a finding unless it would be admissible over objection in a civil action.

NOTICE OF INTENT TO APPEAR FORM

(Name of Participant or Party) _____ plans to participate in the water right hearing regarding the Solvang Petitions Hearing,

Scheduled to begin on August 31, 2020

1) Check only one of the following boxes:

- Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.
- Option 2:** I/we intend to participate as a party by presenting any of the following: an opening statement, direct testimony, cross-examination or rebuttal, and intend to participate as a party in this hearing.

2) If you selected Option 2 above and intend to provide direct testimony, complete the witness table below. If not, skip to item 3 below.

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Direct Testimony (minutes)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please attach additional pages.)

3) Fill in the following information of the participant, party, attorney, or other representative:

Name (type or print): _____

Represented party (if applicable): _____

Mailing Address: _____

Telephone Number: _____

E-mail Address: _____

Optional:

- I/we decline electronic service of hearing-related materials.

Signature: _____ Date: _____

SERVICE LIST

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